

**SUGGESTED VACATION OF A SUSPENDED PUNISHMENT SCRIPT**

This enclosure contains instructions and a suggested script to follow to vacate a prior suspended punishment under Article 15, UCMJ or Summary Court-Martial. Section 1.D. (vacation of NJP) and paragraph 2.G.5. (vacation of SCM) of this Manual provide further guidance to the conduct of a vacation hearing. For simplicity purposes, the script is written for a vacation of NJP, but can be easily modified for vacation of SCM punishment. The script provided in this enclosure is appropriate for the sole purpose of considering the vacation of a suspended punishment. Enclosure (1) should be consulted if the command desires to vacate a suspended punishment and award nonjudicial punishment under Article 15, UCMJ at the same time. The following brief description will assist a mast authority determine how to best use this enclosure and if one of the provided scripts are desirable.

- A. The first section (Section A, page 3) describes the format of the script.
- B. The second section (Section B, pages 4 - 8) is simple script that may be used in deciding whether to vacate the prior suspension of punishment.

It is not necessary to hold a hearing in order to vacate a prior suspended punishment. However, the member should ordinarily be notified the command is considering vacating a prior suspended punishment and given an opportunity to respond.

Following the suggested script is not required for a valid vacation of a suspended punishment under Article 15, UCMJ; however, ensuring the member's rights are provided and preserved is required. The script is intended to assist the mast authority to accomplish that goal. The mast authority may amend and stylize the provided script as necessary, or follow a different process to meet the unit's need for good order and discipline to the extent the member's rights under law (Articles 15 and 31b, UCMJ), Presidential Order (Part V, MCM), and regulations of the Judge Advocate General of the Coast Guard and Chief Counsel (Chapter 1, MJM), are followed.

A hearing to vacate a prior suspension of punishment is normally very brief, conducted in a more private setting than is mast, and has far fewer participants. It does not require as much explanation or participation because those rights and benefits were provided at the original mast or court-martial originally awarding the punishment presently under consideration. As such, many of the requirements of a mast hearing are not required for the vacation of a prior suspended punishment.

Also different than a mast hearing is the fact that the mast authority need not make a determination on every allegation of misconduct. It is sufficient that the mast authority determine that any misconduct or violation of a condition of suspension occurred in order to vacate the suspension of prior punishment.



## VACATION OF SUSPENDED PUNISHMENT SCRIPT CONVENTIONS

- A. General:** This is a suggested procedure, presented in script form, for conducting a vacation proceeding under Article 15, UCMJ. It may be copied or printed and amended as necessary for each mast. Section 1.D contains and paragraph 2.G.5., contain a discussion of the procedure. For simplicity purposes, the script is written for a vacation of NJP, but can be easily modified for vacation of SCM punishment.

### 1. TYPEFACE CONVENTIONS.

- a. **SECTION LABELS AND NAVIGATION POINTS ARE DESIGNATED BY BOLD CAPITALS.**
- b. *Instructions, including navigation directions based on elections made during the proceedings, are in italic type. Significant decision points are enclosed in a box with additional directions.*
- c. The script that the mast authority should read aloud and responses from other mast participants are designated by plain type.
- d. Optional sections and information that may change from one proceeding to another, are enclosed in brackets (“[“, “]”).
- e. **Double underlined** text designates a speaker; **Single Underlined** text indicates the mast authority may wish to insert an individual’s name.
- f. Items noted in paragraph A.2., below, and again at the appropriate points in the script, are preceded by a “□” and indicate matters that should be considered prior to mast.

### 2. PRIOR TO THE HEARING : The mast authority should ensure the following items are completed prior to the mast hearing to avoid delay (items preceded by an asterisk (\*) may be performed by the Executive Officer or designee):

- ☐ Review the documents from the prior mast/SCM, such as the Form CG- 4910 or DD-2329, the PIO Report, and all statements and evidence attached to the PIO Report.
- ☐ Review the elements for each alleged offense (*see*, Part IV, MCM). \*It may be helpful to copy, or make a list, of the elements of each offense and, in some cases the lesser-included offenses, to refer to during the mast proceeding.
- ☐ Review the notes in paragraph 6 of the script to identify the requirements needed to vacate an earlier suspended punishment.
- ☐ \*Ensure the member has had the opportunity to examine the PIO report, documents, statements, etc., the mast authority will consider at the hearing.
- ☐ \*Determine if there were any conditions of the suspension other than a new UCMJ violation.
- ☐ \*Have copies of the MJM and MCM available as references during the hearing.

**B. VACATION OF A SUSPENDED PUNISHMENT HEARING SCRIPT****1. OPENING STATEMENT OF THE MAST AUTHORITY  
(COMMANDER, COMMANDING OFFICER, OR OFFICER-IN-CHARGE)**

**Mast Authority:** *Advice member of his or her rights and the mast procedure.*

- [Member], On \_\_\_\_\_ 20(\_\_), I awarded Non-Judicial Punishment under Article 15, UCMJ that included \_\_\_\_\_. I suspended \_\_\_\_\_ for a period of \_\_\_\_\_ months. I have received information that has caused me to consider vacating that suspension. Therefore, I am holding this hearing under Article 15 of the Uniform Code of Military Justice to determine if I will vacate the suspended punishment of \_\_\_\_\_ that was previously suspended. As a preliminary matter, I will advise you of the procedure I shall follow.
- First, I will inform you of the specific nature of the allegations I have received.
- Second, I will then review for you the information available to me on which I will base my decision to vacate the prior suspended punishment.
- Third, I will ask you if you desire to make a statement about the allegation(s) and conduct in question.
  - If you admit the allegation(s), no further evidence need be produced before I decide whether to vacate suspension of the punishment previously awarded. However, you will be given the opportunity to present matters in the nature of a defense, extenuation, or mitigation. Additionally, anything you say may be used against you in this proceeding, at any other administrative proceeding including nonjudicial punishment under Article 15, UCMJ, or in a trial by court-martial. Before I impose punishment, you will be given the opportunity to present matters in extenuation or mitigation, as will be more fully explained later.
  - You are under no obligation to admit the allegation(s). If you do not admit the allegation(s), I may not vacate the suspended punishment unless I find, based on the information available to me, that you committed the alleged offense(s).
- After all the available evidence has been received I will give you an opportunity to make a statement that might defend or justify your actions.
- Finally, I will allow you to present information in extenuation to explain the circumstances surrounding the offenses, or in mitigation to persuade me to vacate less than the full suspended punishment that is available to me. I will then decide whether or not to vacate the prior suspended punishment and how much of that suspended punishment to reinstate.

- I will decide if I need to hear from witnesses or receive additional information in order to make my decision. While you are free to indicate I need to hear from others or view other documents it is within my discretion to determine when I have sufficient information to make a decision.
- I want to make it very clear that you are not required to make any statement at all. You have the right to remain absolutely silent, and make no comments whatsoever about this matter.
  - If you remain silent, I shall not consider your silence as an admission of anything, and will not consider your silence against you in any way.
  - On the other hand, if you make a statement, I may consider anything you say in determining whether or not to vacate the prior suspended punishment. Anything you say may also be used against you in other administrative proceedings including nonjudicial punishment under Article 15, UCMJ, or in a trial by court-martial.
- Do you have any questions at this time?

**Member:** (Reply). *The mast authority should answer any questions.*

## 2. INFORMING THE MEMBER OF THE REPORTED OFFENSE AND DOCUMENTATION

*Normally, sufficient information is available in document form to make a determination whether to vacate the suspension of an earlier punishment.*

**Mast Authority:** [Member], I have before me information alleging you committed the following offense(s):

- ☐ [Synopsis allegations].
- ☐ This information was received from \_\_\_\_\_.
- ☐ ***If available, but not required:*** The following persons are indicated to be witnesses: \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.
- ☐ ***If available, but not required:*** This report of misconduct was investigated by \_\_\_\_\_, who recommended: [read PIO comments and recommendations; it is not necessary to read the complete investigation].

**Mast Authority:** [Member], do you have any questions about the exact nature and details of the report of misconduct that has been made against you?

**Member:** (Reply). *The mast authority should answer any questions.*

**Mast Authority:** ☐ The information I have available includes (following are examples):

- 1) The ship's log for \_\_\_\_\_ 20( ) indicating \_\_\_\_\_;
- 2) \_\_\_\_\_'s statement dated \_\_\_\_\_ 20\_\_ indicating \_\_\_\_\_;

- 3) \_\_\_\_\_'s statement dated \_\_\_\_\_ 20\_\_ indicating \_\_\_\_\_;
- 4) A copy of \_\_\_\_\_;
- 5) Etc.

**Mast Authority:** Do you have additional documentation to present for my consideration?

**Member:** (Reply). *This is not an opportunity to make a statement that follows below, after appropriate warnings.*

### 3. INQUIRY OF MEMBER.

**Mast Authority:** Do you choose to admit or to not admit any, or all, of the allegations made against you? Before you answer, you are reminded that your decision to not admit the allegations will not be considered against you. If you admit the allegations, I may find that you violated the terms of the suspension of prior punishment without hearing any further information. Further, your admission may be used against you if this matter is referred to trial by court-martial or other administrative proceedings including nonjudicial punishment.

**Member:** [Reply].

- If the member **admits any allegation** of misconduct, skip to paragraph 5.
- If the member **does not admit any allegation**, continue with paragraph 4.

### 4. EXAMINATION OF WITNESSES BY MAST AUTHORITY

***Note:*** most vacation hearings will not require witnesses.

*With respect to any allegations of misconduct that the member did not admit, the mast authority may bring witnesses to the vacation hearing, normally one at a time, and through questioning, bring out the necessary details relating to the allegations. It is important to remember that not every allegation needs to be decided; it is sufficient to vacate the suspension of prior punishment if a single offense was committed or a single condition of the suspension was violated. Witness testimony may be, but is normally not, obtained under oath at the discretion of the commanding officer. If desire, an appropriate oath for a witness would be, "Raise your right hand.... Do you (swear) (affirm) that the evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth [, so help you God]?"*

**Mast Authority:** [Witness], tell me what you know about \_\_\_\_\_. *The Mast Authority should follow up and ask any relevant questions.*

**Mast Authority:** [Member], do you have any questions you would like me to ask this witness?

**Member:** (Respond).

## 5. OPPORTUNITY FOR MEMBER'S STATEMENT ON THE MERITS, DEFENSE, EXTENUATION, OR MITIGATION.

**Mast Authority:** [Member], I have reviewed the documentation [and heard from the witness(es)]. Before I make a decision in this matter, I will give you an opportunity to make a statement and tell me your side of the story. You may tell me what occurred, you may present matters in defense to the allegations, and you may present matters in extenuation or mitigation. Extenuating information tends to explain the circumstances surrounding the commission of the offense(s). Mitigating information might convince me to impose less punishment than I might otherwise award. But, before you respond....

- Let me remind you again, that you are not required to make any statement. You have the right to remain silent, and make no comment about this matter. If you remain silent, I shall not consider your silence as an admission of anything, and will not count your silence against you in any way.
- On the other hand, if you make a statement, I may consider everything you say in determining whether or not to vacate the prior suspended punishment. Anything you say may also be used in a court-martial or other administrative proceeding, including nonjudicial punishment under Article 15, UCMJ.

Do you desire to make a statement?

**Member:** (No; or makes statement).

## 6. VACATION OF EARLIER SUSPENDED PUNISHMENT

### ***Notes:***

- *If the member is subject to suspended punishment under an approved court-martial sentence, the Mast Authority should contact his or her Staff Judge Advocate for guidance on vacating the suspension **before** vacating the suspension of punishment. See RCM 1109, MCM. The Mast Authority should also contact the SJA for guidance if a court-martial sentence has not yet been approved, but part of the sentence would be suspended in accordance with a Pre-trial Agreement.*
- *If the member is subject to suspended punishment(s) from a prior NJP, the suspension may be vacated and the **suspended punishment imposed if:***
  - (1) *The period of suspension has not expired (e.g., not more than 3 months has passed if the prior punishment was suspended for 3 months). Normally, no punishment may be suspended for more than six months;*
  - (2) *The Mast Authority is the individual, successor in command, or superior officer in command of the authority who imposed or approved the suspended punishment;*

- (3) *The Mast Authority has authority to impose punishment equal to that which is to be vacated (e.g., an O-3 CO may not vacate the suspension of 60 days restriction because an O-3 may award a maximum of only 14 days restriction; in which case the O-3 would be authorized to vacate up to 14 days of the suspended restriction);*
  - (4) *The Mast Authority determines by a preponderance of the information reasonably available that the member committed an offense under the UCMJ during the period of suspension **or** that the member violated a condition of the suspension; and*
  - (5) *The Mast Authority determines that vacation of the suspended punishment is appropriate.*
- *The mast authority may vacate all, or a part, of the suspended punishment.*
  - *If the mast authority decides to vacate some, or all, of a prior suspension, he or she should announce:*

**Mast Authority:** [Member], I find that you committed [an] offense[es] under the UCMJ, [or violated a condition of the prior suspension,]. Specifically, I believe you [*provide plain language description of the misconduct*]. I am vacating the suspension of [state specifically the portion, or all, of the prior suspended punishment] awarded and suspended on \_\_\_\_\_ 20(\_\_). That punishment commences immediately. This vacation hearing is concluded. You are excused [and will return to your normal duties].

***Or...***

**Mast Authority:** [Member], based on the information I have heard here today I am not convinced that you have committed any offense or violated a condition of the suspension of the earlier punishment that would justify vacating the suspension of punishment. Therefore, the suspension remains in effect under its original terms. This vacation hearing is concluded. You are excused and will return to your normal duties.

## RECORD OF PROCEEDINGS TO VACATE SUSPENSION

[Command]

[Address]

Phone:

FAX:

5812

[DATE]

From: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

To: [MEMBER, SSN, USCG]

Subj: NOTICE OF PROPOSED VACATION OF SUSPENSION

Ref: (a) Military Justice Manual, COMDTINST M5810.1D, Subparagraph 1.E.2.a.

On [date] the [nonjudicial punishment of] [summary court-martial sentence to] [*insert punishment that was suspended*] was suspended for [number] [days/months].

2. The following information has caused me to propose vacation of this suspension. [*Insert plain language description of the misconduct alleged or condition of suspension suspected to have been violated*].

*[Choose one of the following paragraph 3's]*

3. *Hearing Scheduled.* A hearing as set forth in Article 15(e)(1-7), UCMJ, paragraphs 1.E.5., or 2.G.5. and enclosure 7a of reference (a) will be held before me concerning the vacation of this suspension will be held at [time], [date], at [location]. At that hearing you will have the opportunity to present your contentions as to why the suspension should not be vacated.

3. *No Hearing.* A hearing before me concerning the vacation of this suspension will not be held. In lieu of a hearing you may, however, present to me, in writing or orally over the phone, your contentions as to why the suspension should not be vacated. Any such statement must be received by me not later than [time], [date].

[COMMANDING OFFICER/OFFICER-IN-CHARGE]

5812  
[DATE]

FIRST ENDORSEMENT ON [UNIT] LTR 5812 DTD [DATE]

From: [MEMBER, USCG]

To: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

Subj: NOTICE OF PROPOSED VACATION OF SUSPENSION

1. I acknowledge receipt of the notice of vacation of suspension of prior punishment proceedings.

[MEMBER]

**ACTION OF COMMANDING OFFICER (VACATION)**

[Command]

[Address]

Phone:

FAX:

5812

[DATE]

From: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

To: [MEMBER, SSN, USCG]

Subj: NOTIFICATION OF ACTION TO VACATE SUSPENSION

Ref: (a) My ltr 5812 of [DATE]

1. After considering all matters presented, you are notified that the suspension of [nonjudicial punishment of] [summary court-martial sentence to] ] [*insert punishment that was suspended*] [remains suspended under the prior conditions of suspension.] [is hereby vacated. The [insert specific portion of the suspended punishment that is vacated] is effective immediately.]

[COMMANDING OFFICER/OFFICER-IN-CHARGE]

5812

[DATE]

FIRST ENDORSEMENT ON [UNIT] LTR 5812 DTD [DATE]

From: [MEMBER, USCG]

To: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

Subj: NOTIFICATION OF ACTION TO VACATE SUSPENSION

1. I acknowledge receipt of the notice of vacation of suspension of prior punishment proceedings.

[MEMBER]

